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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

17 United States of America,

18 Plaintiff,

19 No. CR-22-00889-01-PHX-MTL

20 v.
21 James W. Clark,

22 Defendant.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

23 **UNITED STATES' SENTENCING MEMORANDUM**

24 On February 14, 2021, Defendant James W. Clark sent a web communication to the
25 Arizona Secretary of State's Office that contained a bomb threat. Defendant was
26 subsequently charged with one count each of 18 U.S.C. §§ 844(e) (bomb threat), 1038
27 (bomb hoax), and 875(c) (interstate threatening communication). Defendant pled guilty to
28

1 one count of transmitting an interstate threatening communication. Threats such as that
2 sent by Defendant represent a growing problem of national concern: As is true in this case,
3 threats leave election officials and workers fearful for their lives and for the safety of their
4 families.
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6 For the reasons discussed below, a within-Guidelines sentence of 57 months of
7 imprisonment for Defendant is sufficient but not greater than necessary to comply with the
8 purposes outlined in 18 U.S.C. § 3553.
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10 **I. BACKGROUND**

11 The Draft Presentence Investigation Report (“PSR”), ECF No. 53; the plea
12 agreement (“Plea Agreement”), ECF No. 47; and the Government’s Response in
13 Opposition to Defendant’s Objections to the Draft Presentence Report (“Gov’t Resp.”),
14 ECF No. 63, provide detailed information regarding the facts underlying the charged
15 conduct, so the government only briefly describes the facts here.
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17 On or about February 14, 2021, at approximately 9:52 p.m., local Arizona time,
18 while in Yarmouth, Massachusetts, Defendant submitted an electronic communication to
19 an official (“Public Official”) with the Arizona Secretary of State’s Office in Phoenix,
20 Arizona, via the “Contact Elections” online form of the Arizona Secretary of State’s Office
21 website. (Plea Agreement, at 7.) In the subject line of this message, Defendant wrote the
22 first name of Public Official. (*Id.*) In the body of the communication, Defendant wrote,
23 “Your attorney general needs to resign by Tuesday February 16th by 9 am or the explosive
24 device impacted in her personal space will be detonated. Thanks!!!! Don.” (*Id.*; PSR ¶¶ 2,
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1 6.) In the “Name” section of the communication, Defendant wrote, “Donny Dee.” (Plea
2 Agreement, at 7.)

3 Further, Defendant conducted the following searches, at the approximate days and
4 times listed below, with the transmittal of the charged communication bolded in the below
5 sequence:

- 6
- 7 ▪ February 14, 2021, at 9:47 p.m., local Arizona time: Defendant searched for
8 “Arizona secretary of state” and visited the Arizona Secretary of State
9 website at <https://azsos.gov>.
 - 10 ▪ **February 14, 2021, at 9:48 p.m. and 9:51 p.m., local Arizona time: Defendant visited the Contact Elections page of the Arizona Secretary of State’s web site at <https://azsos.gov/contact-elections>.**
 - 11 ▪ February 14, 2021, at 9:52 p.m., local Arizona time: Defendant searched for
12 “[Public Official’s Full Name] crazy.”
 - 13 ▪ February 14, 2021, at 9:52 p.m., local Arizona time: Defendant visited a
14 website at [https://www.kvoa.com/news/top-stories/2020/11/19/secretary-of-state-\[Public%20Official's%20Full%20Name\]-responds-to-threats-over-election-results/](https://www.kvoa.com/news/top-stories/2020/11/19/secretary-of-state-[Public%20Official's%20Full%20Name]-responds-to-threats-over-election-results/).¹
 - 15 ▪ February 14, 2021, at 9:52 p.m., local Arizona time: Defendant searched for
16 “[Public Official’s Full Name] address.”
 - 17 ▪ February 14, 2021, at 9:53 p.m., local Arizona time: Defendant searched for
18 “[Public Official’s Full Name] how to kill.”
 - 19 ▪ February 18, 2021, at 2:39 a.m., local Arizona time: Defendant searched for
20 “fema boston marathon bombing.”
 - 21 ▪ February 18, 2021, at 2:42 a.m., local Arizona time: Defendant searched for
22 “fema boston marathon bombing plan digital army”

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27 ¹ The website for this November 19, 2020 article appears to have changed to:
28 [https://www.kvoa.com/news/politics/secretary-of-state-\[Public%20Official's%20Full%20Name\]-responds-to-threats-over-election-results/article_5767a07e-046d-5d71-ac66-c62b3d0c84ac.html](https://www.kvoa.com/news/politics/secretary-of-state-[Public%20Official's%20Full%20Name]-responds-to-threats-over-election-results/article_5767a07e-046d-5d71-ac66-c62b3d0c84ac.html).

1 (PSR ¶¶ 6, 7; Plea Agreement, at 7-8; Gov't Resp. at 2-3.)

2 Defendant transmitted the charged bomb threat on Sunday, February 14, 2021.
3 Monday, February 15, 2021, was a federal holiday.² Then, on February 16, 2021, shortly
4 after the 9 a.m. deadline for detonation of the threatened explosive device, staff members
5 at the Arizona Secretary of State's Office read Defendant's message, were fearful, and
6 immediately contacted law enforcement, which quickly responded to the situation. (PSR
7 ¶ 7.)

8 In response, law enforcement partially evacuated the Arizona Secretary of State's
9 Office and the floor of the Arizona Governor, which is located in the same building as the
10 Arizona Secretary of State. (PSR ¶ 7.) Law enforcement ordered the governor and other
11 employees in the building to shelter in place. (PSR ¶ 12.) Meanwhile, the Department of
12 Public Safety ("DPS") searched for an explosive device with its canines on the floors of
13 the Arizona Governor and the Arizona Secretary of State's Office. (*Id.*) Additionally, DPS
14 conducted bomb sweeps of both the Public Official's personal residence and her vehicle.
15 (*Id.*) The law enforcement responses to Defendant's bomb threat impacted official
16 business at the government building. (*Id.*) Further, after investigation into the source of
17 the threat and tracking the IP address for the threat, DPS coordinated with the
18 Massachusetts State Police to approach and interview Defendant on February 25, 2021.
19 (PSR ¶¶ 7, 8.)

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27 ² U.S. Office of Personnel Mgmt, Federal Holidays: Historical Data (2023-2011),
28 <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=Historical-Data>.

1 On July 26, 2022, Defendant was charged by indictment with one count of making
2 a bomb threat, one count of perpetrating a bomb hoax, and one count of communicating an
3 interstate threat. (Indictment, ECF No. 3.) On August 11, 2023, Defendant pled guilty to
4 one count of transmitting an interstate threat. (Plea Agreement, at 2.) Defendant
5 acknowledged that the circumstances of his sending the message described above were
6 such that it may reasonably be believed that Defendant placed or would detonate an
7 explosive or other lethal device in a place of public use or a state or government facility.
8 (Plea Agreement, at 8.) Defendant also acknowledged that he sent the message charged in
9 this case for the purpose of issuing a true threat and acknowledged that a reasonable
10 recipient would have interpreted the message that he transmitted as a true threat. (*Id.*)
11

12 **II. SENTENCING RECOMMENDATION**

13 A. The Court Should Sentence Defendant to 57 Months of Imprisonment

14 Defendant's conduct warrants a term of imprisonment within the Guidelines
15 range—here, 57 months, which would be sufficient but not greater than necessary to
16 comply with the purposes set forth in 18 U.S.C. § 3553. The government makes this
17 recommendation on the basis that a Guidelines sentence would be appropriate. The Draft
18 Presentence Report, ECF No. 53, correctly calculates the Guidelines range as 57 to 60
19 months. The government recommends a term of imprisonment of 57 months, at the low
20 end of this Guidelines range,³ though the government understands that Defendant plans to
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³ The government further recognizes that Defendant has objected to several
27 sentencing enhancements, ECF No. 58, in the Draft Presentence Report, and the
28 government has responded to those objections, ECF No. 63. The Court's determination on
the application of the disputed enhancements may affect the Defendant's Guidelines range.
To the extent that the Defendant's sentencing range ultimately differs from the current
range proposed in the Draft Presentence Report, the government notes that it intends to

1 present mitigation information that the Court may find warrants a below-Guidelines
2 sentence.

3 Defendant pled guilty to one count of violating 18 U.S.C. § 875(c), which
4 criminalizes “transmit[ting] in interstate or foreign commerce any communication
5 containing any threat to kidnap any person or any threat to injure the person of another.”
6 18 U.S.C. § 875(c); *see* Plea Agreement at 2. In the Plea Agreement, the parties made no
7 agreements as to sentencing. (Plea Agreement at 3.)
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10 B. The Nature and Circumstances of the Offense and the History and
11 Characteristics of the Defendant (18 U.S.C. § 3553(a)(1))

12 The nature and circumstances of Defendant’s offense conduct justify the Guidelines
13 term of imprisonment that the government seeks here. In response to Defendant’s bomb
14 threat, law enforcement evacuated some workers on the floors of the Arizona Secretary of
15 State’s Office and the Arizona Governor’s Office. Law enforcement ordered the governor
16 and other employees in the building to shelter in place. Meanwhile, the Department of
17 Public Safety (“DPS”) searched for an explosive device with its canines on the two floors.
18 And the Public Official was subjected to bomb sweeps of both her home and her vehicle.
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20 Employees at the Arizona Secretary of State’s Office who received the
21 communication and responding law enforcement had no way of knowing that Defendant
22 did not intend to detonate an explosive device. The law enforcement response—the
23 immediate evacuations, orders to shelter in place, canine bomb sweeps, exigent
24 circumstances investigative work to find the identity of Defendant—and the fear that
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26 seek a sentence within the Guidelines range as determined by the Court.
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1 Defendant's threat engendered among the staff in that building are entirely reasonable,
2 foreseeable, and a direct result of Defendant's conduct. In fact, Defendant has stipulated
3 as such, "acknowledg[ing] that a reasonable recipient would have interpreted the web
4 contact message that he transmitted as a true threat." (Plea Agreement, at 8.)
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6 Yet in a recent prior filing, Defendant states that "evidence shows that [Defendant]
7 was under the influence of drugs and alcohol, when he committed the crime," and that "[h]e
8 was drunkenly trolling the internet, sitting inside a room in his family member's home,
9 [and] binge drinking and using drugs every day . . ." (ECF No. 58, at 6.) No such evidence
10 is in the record, and Defendant cites to no support for this assertion.
11

12 Additionally, Defendant filed a post-charge psychopharmacology evaluation
13 under seal that suggests in part that other factors may have caused Defendant to lack the
14 requisite subjective intent for the charged conduct.⁴ Defendant argues that this report
15 "outlines [Defendant]'s alcohol and drug use at the time of the offense and lays out Dr.
16 [James D.] Stoehr's expert opinion regarding the cognitive, emotional, and behavioral
17 effects of these psychoactive substances." (ECF No. 58, at 7.) Defendant also describes
18 this report as "stat[ing] the quantity and types of substances [Defendant] was using,
19 significantly impaired his cognition (decision making, higher reasoning), emotional
20 stability and behavioral control (impulsivity)"; and that "the quantity of alcohol he was
21 drinking (daily binge drinking) affected his sensory functions, concentration, attention,
22 reaction time, decision making, judgment, informational processing, and memory
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28 ⁴ The government cites to Defendant's descriptions of this report from Defendant's
publicly docketed Objections to the Draft Presentence Report, ECF No. 58, for purposes
of discussion here.

1 formation, up to the point of blackouts.” (*Id.*) Yet the writer based his analysis on medical
2 records and did not state that he directly observed Defendant at the time he transmitted the
3 charged threat.

4 The government acknowledges that Defendant has faced difficult, challenging
5 circumstances, and it understands that Defendant plans to present mitigation information
6 that the Court may find warrants a below-Guidelines sentence. At the same time, however,
7 Defendant appears to be wavering in truly accepting responsibility for his conduct here.
8 At bottom, Defendant is attempting to have it both ways—to distance himself from the
9 charged conduct and the requisite subjective intent underlying the charge by arguing that
10 he was “under the influence of drugs and alcohol,” ECF No. 58, at 6, when he committed
11 the offense, while accepting the benefits of a plea for which Defendant has admitted that
12 he had the “purpose of issuing a true threat” when he transmitted the charged bomb threat.
13 (Plea Agreement, at 8.)

14 C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense,
15 to Promote Respect for the Law, and to Provide Just Punishment for the
Offense (18 U.S.C. § 3553(a)(2)(A))

16 The government’s sentencing recommendation accounts for the seriousness of the
17 offense, which strikes at one of the tenets of our government: that public officials should
18 be able to do their jobs free from fear and intimidation. Further, Defendant targeted the
19 Public Official for her role in the administration of elections in Arizona. As described
20 below, public officials and workers who administer elections have faced a growing number
21 of threats to their lives and the safety of their families, and such threats have often disrupted
22 or made more difficult the functioning of government and the administration of elections.

Given Defendant's conduct, a meaningful sentence is necessary to promote respect for the law and provide just punishment commensurate with the fear and government disruption that Defendant caused.

D. The Need for the Sentence Imposed to Afford Adequate Deterrence to Criminal Conduct (18 U.S.C. § 3553(a)(2)(B))

A Guidelines term of 57 months' of imprisonment would adequately serve the purpose of general deterrence. The government possesses no information that indicates that the Defendant will commit similar offenses in this district. However, election officials and workers report that they are targeted by threats across the nation, and this disturbing trend underscores the need for general deterrence.

According to one survey, for instance, nearly one in three local election officials report being threatened, abused, or harassed in recent years, and nearly half reported being concerned about the safety of their colleagues and/or staff.⁵ Further, 73 percent of local election officials feel that threats have increased in recent years.⁶ There are serious effects to threats such as the ones charged here. For instance, over 50 percent of local election workers are concerned that threats, harassment, and intimidation will harm the retention and recruitment of workers to administer elections.⁷

These challenges to the retention and recruitment of election officials and workers have very real consequences in Arizona. In this state, "80% of the state's counties have at

⁵ See *Local Election Officials Survey*, Brennan Center for Justice at 3 (Apr. 2023), available at <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>.

⁶ *Id.* at 11.

⁷ *Id.* at 3.

least one new chief local election official, and 98% of Arizonans will see the 2024 election administered by someone different than the officials who administered the 2020 election.”⁸ Tellingly, “the officials who left these posts took with them a combined 176 years of experience.”⁹ And, “[i]n the counties with new chief local election officials, the median amount of experience these officials had dropped from about 10 years to about 1 year.”¹⁰ High turnover among election officials and workers is expensive due to costs “to search for, hire, and train new staff” on election administration processes and equipment specific to each office.¹¹ Further, the loss of institutional knowledge can present serious challenges to the administration and security of elections.¹²

Election officials and workers need to be able to administer and run free and fair elections safely and securely. A sentence of 57 months of imprisonment could push those who would criminally threaten election officials and workers to reconsider their planned conduct, as the public becomes increasingly aware that such criminal conduct can have serious consequences. Further, the victims here—and all individuals who administer our elections—deserve to be able to do their jobs without fear and intimidation, and to know that those who choose to threaten them will face just punishment.

⁸ See Michael Beckel, et al., Issue One, *The High Cost of High Turnover*, at 4 (Sept. 2023), <https://issueone.org/wp-content/uploads/2023/09/The-High-Cost-of-High-Turnover-Report.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 8.

¹² *Id.* at 9-10.

1 **III. Conclusion**

2 For the foregoing reasons, the United States respectfully requests that the Court
3 sentence Defendant to a Guidelines term of imprisonment of 57 months, to be followed by
4 a period of supervised release.
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6 Respectfully submitted this 4th day of March, 2024.

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8
9 GARY M. RESTAINO
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11 District of Arizona

12 /s/ Sean K. Lokey
13 Sean K. Lokey
14 Assistant U.S. Attorney

15 /s/ Tanya Senanayake
16 Tanya Senanayake
17 Trial Attorney
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20 U.S. Department of Justice

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 4, 2024, I electronically filed the foregoing pleading
3 with the Clerk of the Court using the CM/ECF system, which will send notification of such
4 filing to the attorney of record for the defendant.

5
6 */s/ Tanya Senanayake*

7 Tanya Senanayake
8 Trial Attorney
9 Counterterrorism Section
10 National Security Division
11 U.S. Department of Justice

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